

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MATTHEW G. SILVA,

Plaintiff,

v.

ROB McKENNA, JOHN S. BLONIEN,
DOUGLAS CARR, KIMBERLY FRINELL,
AMANDA MIGCHELBRING, ELDON
VAIL, DAN PACHOLKE, STEVE
SINCLAIR, CHRIS BOWMAN, CHUCK
PEASE, JURGENSEN, LINDA
MICHAEL, DAVID S. ROBERTS,
TAMARA ROWDEN, RONALD
FREDERICK, DEVON SCHRUM,
LORI SCAMAHORN, DENNIS DAHNE,
KERRI McTARSNEY, CORYDON
WHALEY, CLINT MAY, CHERYL
SULLIVAN, VANESSA COLEMAN,
TIMOTHY LANG, HEIDI HOLLAND,
DANIEL JUDGE, PAT GLEBE, JEFFREY
UTTECHT, CHARLES JONES, GREGORY
F. JONES, NORMAN GOODENOUGH,
SCOTT FRAKES, MARK MILLER,
MELINDA FERRELL, HAROLD
ARCHIBALD, ROD ASKELSON,
WASHINGTON DEPARTMENT OF
CORRECTIONS,

Defendants.

No. C11-5629 RBL/KLS

ORDER DENYING MOTION TO
COMPEL

Before the Court is Plaintiff Matthew Silva's motion to compel the production of hard copies of discovery documents without cost. ECF No. 138. Mr. Silva states that in response to his requests for the production of documents, counsel for defendants has responded that he will

1 provide the documents on a CD (at no cost) or in paper form (for a fee). Mr. Silva claims that he
2 is indigent and cannot pay for the copies. He also requests that a default judgment be entered in
3 his favor as sanctions for defense counsel's failure to appear at a discovery conference scheduled
4 to occur between the parties on January 9, 2012. *Id.*, pp. 2-3.

5 Mr. Silva is *not* proceeding *informa pauperis* in this matter. He paid the Court's filing
6 fee of \$350.00 to commence this action on September 19, 2011. Receipt No. TAC009090.

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8 The Court has reviewed the motion and Defendants' response (ECF No. 140), and finds
9 the motion is without merit.

10 DISCUSSION

11 A. Motion for Sanctions

12 While a party may apply to the court for an order compelling discovery "upon reasonable
13 notice to other parties and all persons affected thereby," the motion must also include a
14 certification that the movant has in good faith conferred or attempted to confer with the person or
15 party failing to make the discovery in an effort to secure the information or material without
16 court intervention." Fed. R. Civ. P. 37(a)(2)(B). In addition, "[a] good faith effort to confer with
17 a party or person not making a disclosure or discovery requires a face-to-face meeting or a
18 telephonic conference." Local Rule CR 37(a)(2)(A).

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20 Plaintiff asks that the Court enter a default judgment in his favor as sanctions against
21 Defendants for counsels' failure to confer with him. However, the record reflects that counsel
22 and Plaintiff had numerous contacts in June during the course of other discovery and that a
23 telephonic conference was scheduled on July 26, 2012. Plaintiff fails to meet the standard for
24 such a drastic remedy or provide a basis that would justify such a remedy for missing a request
25 for a discovery conference. *Estrada v. Speno & Cohen*, 244 F.3d 1050, 1055-56 (9th Cir. 2001);
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1 *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir.1990). Neither does he provide
2 any evidence that Defendants or their counsel were acting in bad faith. Therefore, Plaintiff's
3 motion for sanctions is **Denied**.

4 **B. Motion to Compel Discovery**

5 Fed. R. Civ. P. 34(a)(1) requires the party upon whom the discovery request was served
6 "to produce and permit the requesting party or its representative to inspect, copy, test or sample
7 ..." the items that are deemed responsive to his request. Nothing in Rule 34 requires the
8 producing party to bear the costs associated with the production.
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10 Defendants provided Mr. Silva with three options to inspect the documents responsive to
11 his discovery requests. The documents would be (1) made available for inspection and review
12 by Plaintiff's representative; (2) produced on CD; or (3) copied at a rate of 10 cents per page in
13 addition to postage costs. ECF No. 140, p. 3. These options clearly comport with the
14 requirements of Rule 34 and therefore, the motion to compel shall be denied.
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16 Although Mr. Silva claims he is indigent, he is not proceeding *in forma pauperis* in this
17 lawsuit. Even if he were, that status would not relieve him of his responsibility to fund his
18 litigation and to pay for his discovery costs. *See, United States v. MacCollom*, 426 U.S. 317,
19 321, 96 S.Ct. 2086, 2089, 48 L.Ed.2d 666 (1976) ("the expenditure of public funds [on behalf of
20 an indigent litigant] is proper only when authorized by Congress ..."). The *in forma pauperis*
21 statute, 28 U.S.C. § 1915, provides for the payment of filing fee and service of process only. In
22 *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir.2011), the Ninth Circuit reiterated the limited role of
23 prison authorities in assisting prisoners with their litigation. Prison authorities are only required
24 to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners
25 with adequate law libraries or adequate assistance from persons trained in the law. *Silva*, 658
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1 F.3d at 1102 (quoting *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)).
2 The Court further held that this assistance is only limited to the pleading stage. *Id.* (citing *Lewis*
3 *v. Casey*, 518 U.S. 343, 384, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996)).

4 Accordingly, it is **ORDERED**:

- 5 (1) Plaintiff's motion to compel (ECF No. 138) is **DENIED**.
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7 (2) The Clerk shall send a copy of this Order to Plaintiff and counsel for Defendants.

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9 **DATED** this 17th day of September, 2012.

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12 Karen L. Strombom
13 United States Magistrate Judge
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